

MRS. EMILY WILHELM

JULY 1, 1952.—Committed to the Committee of the Whole House and
ordered to be printed

Mr. JONAS, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H. R. 4755]

The Committee on the Judiciary to whom was referred the bill (H. R. 4755) for the relief of Mrs. Emily Wilhelm, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Page 1, line 6, after the sign "\$" strike out the bill down to the colon in line 8, page 2, and insert in lieu thereof:

5,000 as a gratuity for the death of her son Gerhart Wilhelm corporal United States Marine Corps (305908) who was killed as the result of enemy action in line of duty on November 2 1942 in the British Solomon Islands.

The purpose of the proposed legislation is to pay the sum of \$5,000 to Mrs. Emily Wilhelm of St. Louis, Mo., as a gratuity for the death of her son, Gerhart Wilhelm, corporal, United States Marine Corps (305908), who was killed as the result of enemy action in line of duty on November 2, 1942, in the British Solomon Islands.

STATEMENT OF FACTS

It appears that Corporal Wilhelm wrote his mother on October 1, 1942, in which he stated:

While I think of it, I want you to check on my insurance policy to see whether its any good in the following cases: In event of enemy invasion of the U. S. In event of an accident overseas; in event of an accident involving flying. If it doesn't cover all those you may as well drop it as I have taken out a \$10,000 government policy that covers any eventuality.

And again he wrote his mother, dated October 12, 1942, as follows:

Whenever you do start getting it tho—

Referring to an allotment—

Be sure and let me know that it is getting there okay, and do the same about the insurance policy.

However, after he was killed, an application for insurance could never be found, and therefore no compensation has ever been paid his parents for his death. It is the opinion of the committee that due to these circumstances the sum of \$5,000 should be appropriated for their relief.

Under similar circumstances H. R. 2962, a bill for the relief of Mrs. Maude S. Burman, was enacted and became Private Law 633 of the Eighty-second Congress, approved by the President May 21, 1952.

Therefore, favorable consideration of this bill is recommended.

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington 25, D. C., August 23, 1951.

Hon. EMANUEL CELLER, *Chairman,*
Committee on the Judiciary, House of Representatives,
Washington 25, D. C.

DEAR MR. CELLER: Further reference is made to your request for a report by the Veterans' Administration on H. R. 4755, Eighty-second Congress, a bill for the relief of Mrs. Emily Wilhelm, which provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Mrs. Emily Wilhelm, of Saint Louis, Missouri, the sum of \$10,000, representing the amount which the said Mrs. Emily Wilhelm would have received, as beneficiary under a policy of national service life insurance in the amount of \$10,000, if Gerhart Wilhelm, corporal, United States Marine Corps (305908), deceased son of the said Mrs. Emily Wilhelm had applied for and been granted such policy under the provisions of the National Service Life Insurance Act of 1940, had paid premiums, and had designated the said Mrs. Emily Wilhelm as sole beneficiary of such policy. The death of the said Gerhart Wilhelm as a result of enemy action in the line of duty on November 2, 1942, in the British Solomon Islands and his sudden departure from the continental United States shortly prior thereto, did not permit registry of application for such policy: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

This bill is similar in purpose to H. R. 5969, Eightieth Congress, which was pending before your committee at the close of that Congress.

Evidence of record in the Veterans' Administration discloses that Gerhart Wilhelm (XC-3119552) enlisted in the United States Marine Corps March 4, 1941, served in this country until October 13, 1942, when he embarked at San Diego, Calif., for foreign duty. He disembarked at Noumea, New Caledonia, on October 30, 1942, and was killed in action on November 2, 1942.

In a letter dated February 27, 1943, Mrs. Emily Wilhelm, the mother of the serviceman, made inquiry of the Veterans' Administration regarding her entitlement to payment of national service life insurance. She was informed by letter dated March 11, 1943, that a thorough search of the records of the Veterans' Administration failed to disclose any application by Gerhart Wilhelm for national service life insurance, and that the United States Marine Corps Headquarters advised the Veterans' Administration no application for insurance or allotment for payment of premiums by the serviceman could be found.

Subsequently, Mrs. Wilhelm submitted photostats of two letters from her son. The first of these letters, dated October 1, 1942, insofar as here material, reads as follows:

"* * * While I think of it, I want you to check on my insurance policy to see whether its any good in the following cases: In event of enemy invasion of the U. S.; in event of an accident overseas; in event of an accident involving flying. If it doesn't cover all those you may as well drop it as I have taken out a \$10,000 Government policy that covers any eventuality * * *"

The pertinent part of the second letter, dated October 12, 1942, reads as follows:

"* * * Also I'm taking out an allotment which will send \$50 a month to you but I don't imagine you will receive any of that until after the first of November. Whenever you do start getting it tho, be sure and let me know that it is getting there okay, and do the same about the insurance policy. * * *"

The records of the Marine Corps show that the \$50 allotment referred to in the serviceman's letter of October 12, 1942, was properly executed and payment was made for November 1942. As previously stated, however, there is no record of an insurance application or authorization for deduction of premiums from active service pay.

The Veterans' Administration has made a very extensive investigation in an attempt to obtain some evidence that the serviceman applied for national service life insurance. Inquiries have been directed to the Commandant and the Paymaster, United States Marine Corps, the General Accounting Office, and, in addition, to 34 officers and enlisted men who either served with Mr. Wilhelm or who might have had knowledge of an application for national service life insurance, if such was made by him. Of the replies received, none reveal any evidence tending to show the serviceman had ever applied for national service life insurance. Further, the Veterans' Administration has attempted to locate the report of any physical examination of the serviceman which might have been made for insurance purposes. In accordance with the provisions of the National Service Life Insurance Act of 1940, as amended, any application for national service life insurance made by Gerhart Wilhelm, subsequent to April 19, 1942, should have been accompanied by a report of a physical examination showing his condition of health, and it is reasonable to infer from the excerpt of the serviceman's letter dated October 1, 1942, that he did not apply for insurance prior to April 20, 1942. No record of a physical examination for insurance purposes has been found.

In a letter dated March 13, 1951, the United States Marine Corps advised the Veterans' Administration that after careful consideration and study of the facts in this case, the Marine Corps Headquarters was of the opinion that the serviceman did execute a valid application for national service life insurance while stationed at the Naval Air Station, San Diego, Calif., and, accordingly, an administrative allotment had been established by the Marine Corps covering payment of premiums on \$10,000 national service life insurance, effective September 1, 1942, and stopped with no payment made to the Veterans' Administration. In its letter the Marine Corps expressed the belief that "in view of the individual's location and existing conditions at the time application was made, the application for insurance and related papers were lost or destroyed due to the exigencies of war." The above-quoted language is the standard phraseology used by the service department whenever an administrative allotment is established and forwarded to the Veterans' Administration for consideration. In this particular case the use of this language is difficult to understand since it is claimed that the serviceman applied for insurance while stationed at San Diego, Calif. San Diego, Calif., is a permanent naval installation located within the continental limits of the United States. There is no evidence to show that business was conducted at that installation in other than a normal, efficient manner. Furthermore, there is no showing that there was ever a breakdown of communications between that installation and the Veterans' Administration. Therefore, the reasoning based on the individual's location and exigencies of war cannot be concurred in. The letter from the Marine Corps also enclosed affidavits or letters from six of the serviceman's companions in service. None of these individuals had any personal knowledge of any application having been executed or submitted by the serviceman. Such affidavits or letters merely contained duplicate information of that already in the file. Therefore, since there was no new evidence that the serviceman did apply for insurance during his lifetime, the previous decision denying the claim was affirmed by the Veterans' Administration.

It may be noted that the bill states, in part, that—

"* * * The death of the said Gerhart Wilhelm as a result of enemy action in the line of duty on November 2, 1942, in the British Solomon Islands and his sudden departure from the continental United States shortly prior thereto, did not permit registry of application for such policy: * * *"

The Veterans' Administration does not have any information concerning the circumstances surrounding the departure of this serviceman from the United States. However, in this connection it may be noted that Mr. Wilhelm served more than 19 months within the continental limits of the United States during which time he could have applied for national service life insurance. As heretofore stated, the evidence of record fails to show that he so applied.

H. R. 4755 proposes to authorize and direct the Secretary of the Treasury to pay Mrs. Wilhelm the sum of \$10,000, alleged to represent the amount which she would have received had the serviceman applied for and been issued national service life insurance, had it been in force at the time of his death, and had she been designated as sole beneficiary thereunder. It is noted, in this connection, that since the serviceman died prior to August 1, 1946, in the event there had been insurance in force at the time of his death, settlement would not have been made in a lump sum, as this type of settlement is not authorized with respect to insurance contracts maturing prior to August 1, 1946. In such event, settlement would have been made by a number of monthly installments pursuant to the provisions of section 602 (h) of the National Service Life Insurance Act of 1940, as amended.

The effect of the bill would be to pay a gratuity of \$10,000 to Mrs. Wilhelm. The Veterans' Administration is not aware of any justification for the payment of such a gratuity. Enactment of the proposed legislation would be discriminatory in that it would single out the case of Mrs. Wilhelm for special legislative treatment to the exclusion of other individuals who are unable to establish their right to insurance benefits before the Veterans' Administration, and fail to seek judicial determination of their claims. Further, enactment of the bill might be a precedent for requests for like treatment in similar cases.

The Veterans' Administration does not believe that private bills of this nature should receive favorable consideration.

Advice has been received from the Bureau of the Budget that there would be no objection to the submission of this report to the committee.

Sincerely yours,

O. W. CLARK,
Deputy Administrator

(For and in the absence of the Administrator).

OCTOBER 1ST, 1942 [Thursday eve.]

DEAR MOM, DAD, AND WALTER: Thanks for your last two letters which I received today. One was addressed to Santa Barbara and the other here to the school.

Well, there is really not much news from here except that our squadron is scheduled to ship out in about a week so I thought I would tell you not to be surprised if my suitcase comes home. I think I'll send my blue uniform, skates, and other things that I won't be needing. Anything in there, such as socks or underwear, if it fits, tell Dad he should wear it as I have plenty, and can always get more. You see, we are only allowed to take a certain amount of baggage along, and besides I doubt if there will be any roller skating where we are going. Naturally, no one knows where we will go but of course in such cases there are always rumors. We all are of the opinion that we will go, out to occupy the air field the Marines captured in the Solomons, but even after we get where we are going, I won't be allowed to tell you where I am. So you will just have to wonder until I get back. I should surely get a furlough then. Once we are there, and you read about Marine dive bombers in action, you can be sure that I'll be in there giving them a little h—.

Boy, I'm really fixed up with equipment now. Besides the regular pack, I have a Reising submachine gun, machete, .45 automatic pistol, new type helmet, and flying gear that would be the envy of many a guy. I have the regular fur-lined flight jacket, helmet, polarized goggles, fur-lined boots for high altitudes, and corduroy flying coveralls. I sure hope that I will be allowed to keep all that but I'm not sure. I have an extra pair of goggles that I'll send along for Walter; he ought to like them; and if I can get my hands on one, I'll send him a helmet, too, but that may have to wait a while. I hope that sometime I'll be able to get a picture taken of myself in full flight gear, and maybe my ship, too. Incidentally, what do you think its number is—yeah, that's right—eleven.

While I think of it, I want you to check on my insurance policy to see whether it's any good in the following cases: In event of enemy invasion of the U. S.; in event of an accident overseas; in event of an accident involving flying. If it doesn't cause all those you may as well drop it as I have taken out a \$10,000 Government policy that covers any eventuality, might also mention that you shouldn't worry about me, and remember that no news is good news, as the first thing the Govt. does in case of an accident is notify your next of kin. There may be times when I can't write or something like that, and no doubt the mail will take a good while getting there, so don't let that worry you. Also, once we leave, all my mail and yours will be censored so just don't say anything that might be misconstrued.

I never did tell you, but I knew I would be shipped out when I first volunteered to go to the gunnery school, but I thought it best not to say anything until I was sure. I've been itching for the chance anyway.

I saw the Capt. the other day and asked him about the wings and he said the Marine Corps was having them made now. So I guess I'll soon have them. Also, I'm getting a diploma from the school. As soon as the office gets them all made out, I think I'll send it home, too, along with my other things.

This may just be wishful thinking but I don't think it will take me too long to make sergeant down here; in fact, I may even be a staff sgt. when I see you again. I am not bragging when I say that I am the best radioman in the squadron, because most of the others have had little experience and none have been to Bellevue.

Boy, I've sure got my fill of dive bombing. That's all we do all day long, and it's sure hard on your ears. Today we did high-altitude bombing, diving straight down from 20,000 feet to 2,000. Believe me, that is an experience. You feel like your head is going to explode while you're in the dive, but it doesn't last long. Well, that's about all the room I have so I'll say

So long for now,

Love.

GER.

OCT. 12, 1942 [MONDAY].

DEAR MOM, DAD, AND WALTER: Well I'm still in Dago but I think this is the last opportunity I'll have to write as we will probably go aboard ship tonite. I received your airmail letter, last Friday and would have written much sooner but we have been working so long and hard that I hardly had time to eat and sleep. You know loading a year's supplies for an entire squadron involves a lot of work. If you happen to see Harvey tell him I'll write him as soon as I get a little time as it's been several months since I've written to him.

Thanks a lot for that last letter; it sure made me feel good. Also I'm glad to hear that Walt is collecting scrap metal as every little bit counts. I'm sending my diplomas home and also my PFC and corporal warrants, and also a hundred bucks that I don't think I'll have any use for, for a while. You use that money to your best convenience. Also, I'm taking out an allotment which will send \$50 a month to you but I don't imagine you will receive any of that until after the first of November. Whenever you do start getting it tho, be sure and let me know that it is getting there okay, and do the same about the insurance policy.

We will most likely go up to San Francisco before we cross over; if we get any liberty there I'll send you a card, but I doubt it. Then our next stop will probably be Pearl Harbor and after that —?

We are not doing any more flying now as we shipped our planes last Friday, but I wish you could see how well I can fly a plane now. Every day the gunners get at least 1 hour of "stick time" so in case the pilot gets hit they can bring the plane home. You see, we have dual controls in our ships; that is, the gunner has a throttle, stick, and rudder controls, which is enough to keep a ship flying.

I bought a small camera as we are allowed to take one along only we can't use them till we arrive at our destination. I don't know whether I'll be able to send any pictures home, but at least you can bet I'll have some good ones when I come back.

I guess the best thing to do this year is just forget all about Christmas presents, as there is really no use in your sending anything out there, and I know darned well that I won't be able to buy anything for you. Also for Dad's birthday, Nov. 24th, you just take a nice hunk of dust out of what I am sending and buy something you would like to have.

Well, I guess that's about all for now. I am sending this airmail as I am behind on letters, and I'm enclosing \$100. The other stuff will come by regular mail. Well, so long for now.

Love.

GER.

P. S.—I'll be back in a year so don't be losing any sleep or do any worrying about me. I guess you know when we come back the war will be won.

[PRIVATE LAW 633—82D CONGRESS]

[CHAPTER 313—2D SESSION]

[H. R. 2962]

AN ACT For the relief of Maude S. Burman;

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Mrs. Maude S. Burman, of Hamilton, New York, the sum of \$5,000 as a gratuity for the death of her husband, Lieutenant Frank Winfield Burman, United States Naval Reserve, who died on July 14, 1942, while on active duty: *Provided,* That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

Approved May 21, 1952.

